

# OFFICE OF THE CITY ATTORNEY

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## **Legal Opinion 2019-035**

**TO:** City Council, Mayor John Engen, Dale Bickell, Jeremy Keene, Dennis Bowman, Eric Anderson, Mary McCrea, Andrew Boughan, Jenny Baker, Kevin Slovarp, Troy Monroe, Marty Rehbein, Kirsten Hands, Kelly Elam, Donna Gaukler, Laval Means, Jen Gress

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** December 19, 2019

**RE:** Generally, pursuant to Montana State law an owner of land bounded by a road or street is presumed to own the center thereof.

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## **FACTS:**

Currently pending before city council is a request to vacate the north end of Ronald Avenue and a portion of South Fourth Street East near Ronald Avenue.

## **ISSUE(S):**

If a street or alley subdivision platted for public use is vacated by municipal government who receives the vacated land?

## **CONCLUSION(S):**

Generally pursuant to section 70-16-202 MCA an owner of land bounded by a road or street is presumed to own to the center of the street or road. Also, see section 70-20-307 MCA.

## **LEGAL DISCUSSION:**

A provision of the Montana Subdivision and Platting Act recognizes that it is legally possible to vacate only a portion of a plat. Section 76-3-305, MCA, is entitled "VACATION OF PLATS---UTILITY EASEMENTS". This provision of Montana state law states that a subdivision plat "may be vacated either in whole or in part". Further, section 76-3-305, MCA, also provides that any public utility facility located within any plat dedicated public right-of-way "has an easement over the vacated land to continue the operation and maintenance of the public utility facility".

Section 76-3-305, MCA, states as follows:

**76-3-305. Vacation of plats -- utility easements.** (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by **7-5-2501**, **7-5-2502**, **7-14-2616**(1) and (2), **7-14-2617**, **7-14-4114**(1) and (2), and **7-14-4115**. Upon vacation, the governing body or the district court, as provided in **7-5-2502**, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in **7-5-2502**, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility. (Emphasis added).

Section 76-3-305 MCA of the Montana Subdivision and Platting Act entitled “Vacation of Plats Utility Easements” provides that the governing body or district court shall determine to which properties the title to the streets to alleys of vacated portions must revert stating in pertinent part the “the title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.”

Generally the owner of land bounded by a dedicated public right-of-way for a street, road or alley is presumed to be the owner to the center of the dedicated public right-of-way. See MONT. CODE ANN. § 70-16-202 and 70-20-307.

Sections 70-16-202 and 70-2-307 MCA state:

“70-16-202. OWNER OF LAND BOUNDED BY ROAD. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.” (Emphasis added).

“70-20-307. TRANSFER OF LAND BOUNDED BY HIGHWAY-WHAT PASSES. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant. (Emphasis added).

**CONCLUSION(S):**

Generally pursuant to section 70-16-202 MCA an owner of land bounded by a road or street is presumed to own to the center of the street or road. Also, see section 70-20-307 MCA.

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/s/

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Jim Nugent, City Attorney

JN:jb